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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/530,455

04/05/2005

Alexander Von Weymarn-Scharli

A013-5480 (PCT)

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EXAMINER

EISEMAN, ADAM JARED

ART UNIT

PAPER NUMBER

3736

MAIL DATE

DELIVERY MODE

06/17/2009

PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary	Application No. 10/530,455	Applicant(s) WEYMARN-SCHARLI, ALEXANDER VON	
	Examiner ADAM J. EISEMAN	Art Unit 3736	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 20 March 2009.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 28-42 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 28-42 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Claim Rejections - 35 USC § 103

1. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

2. The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

3. Claims 28-42 are rejected under 35 U.S.C. 103(a) as being unpatentable over Bauerfeind et al (Us 5,337,733) in view of Hattler et al (US 4,406,656).

Bauerfeind discloses a guide device for guiding in a body duct comprising: a flexible sleeve dimensioned to be inserted into a body duct (element 18); a first elongate stretchable hollow body (element 16) disposed inside the sleeve and extending lengthwise in an axial direction along the sleeve; plural second elongate bodies (elements 32) disposed inside the sleeve around the outer circumference of the first body and extending lengthwise in the axial direction in side-by side relation with one another; the first and second bodies being movable to impart flexibility to the guide device; and means for stretching the first body radially outwardly to radially press the

Art Unit: 3736

second body against the inner wall of the sleeve to impart stiffness to the guide device (by removing air in the annular space between the inner body and outer sleeve; column 5, lines 14 - column 6, line 19; figures 1-2).

However, Bauerfeind does not disclose that the guide elements second and first elements are movable relative to one another.

Hattler teaches disposing plural second bodies movable relative to each other around a central body and contained within a sheath wherein inflation of a body or bodies inherently imparts stiffness to the catheter (column 6, lines 23-38; figure 8-9).

Regarding claims 28-42; it would have been obvious to one of ordinary skill in the art at the time of the invention to modify Bauerfeind's second elongate elements to be separate second bodies around and movable relative to the first elongate body as taught by Hattler in order to impart stiffness to the guide device.

Further regarding claim 29, 33, 34, 37, 38 and 39; Bauerfeind discloses that the first elongate body is stretched radially outward by means of withdrawing a fluid or gas from the space between the inner and outer sleeve to cause the inner sleeve to expand radially outward and engage the outer sleeve. Thus, Bauerfeind's objective is to expand the central lumen outward to engage the second elongate bodies against the outer sleeve to impart stiffness to the guide. It would have been obvious to one of ordinary skill to substitute Bauerfeinds negative pressure extension of the hollow body with known positive extension of a flexible hollow body through insertion of fluid pressure into the central lumen to achieve the same functionality as obvious to try.

Further regarding claims 31; Bauerfeind discloses that the second bodies are deformable elastic material (column 5, lines 14 - column 6, line 19; figures 1-2) and would thus inherently flatten when pressed against the outer sleeve.

Further regarding claims 32, 35-36 and 41; Bauerfeind discloses that the second elongate bodies are in side by side relationship when the first body is not stretched radially outwardly and pressed sideways against each other when the first body is stretched (column 5, lines 14 - column 6, line 19; figures 1-2).

4. Claim 42 is rejected under 35 U.S.C. 103(a) as being unpatentable over Bauerfeind in view of Hattler as applied to claim 41 above, and further in view of Castaneda et al (US 5,279,596).

Bauerfeind as modified by Hattler is described in the rejection of claim 41 above; however it does not disclose the sleeve contains a spiral wire in the sleeve.

Castaneda teaches embedding a helical wire support in a tubular member in order to reduce the occurrence of kinks in the tube.

Regarding claim 42; it would have been obvious to one of ordinary skill in the art at the time of the invention to modify the Bauerfeind/Hattler combination to include a spiral wire wound in the lengthwise direction in the sleeve in order to resist the occurrence of kinks in the guide device.

Response to Amendment

The applicant's amendments and arguments/remarks have been considered but are moot in view of the new grounds of rejection.

Art Unit: 3736

Regarding the applicant's arguments, they were considered persuasive and thus new art was relied on for the above rejections.

Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to ADAM J. EISEMAN whose telephone number is (571)270-3818. The examiner can normally be reached on Monday-Friday 9:00 AM-5:00 PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Max Hindenburg can be reached on (571)272-4726. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

AE
/A. J. E./
Examiner, Art Unit 3736

Application/Control Number: 10/530,455

Page 6

Art Unit: 3736

6/4/2009

/Max Hindenburg/

Supervisory Patent Examiner, Art Unit 3736